

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:FSH:BOS:TL-N-5765-00
PColleran

date:

to: Steve King, Team Manager, LMSB/MCT Group 1657

from: Associate Area Counsel, Large and Mid-Size Business, Boston

subject: [REDACTED]
EIN [REDACTED]
UIL 6501.08-17
Consent to Extend the Period of Limitations
Taxable year ended: [REDACTED]
Earliest Expiration of Statute of Limitations: [REDACTED]

DISCLOSURE STATEMENT

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This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This refers to the memorandum from your office requesting guidance on extending the statute of limitations for assessment with respect to [REDACTED] for the taxable year ended [REDACTED].

ISSUE

Who is the proper party to execute a consent to extend the statute of limitations for [REDACTED] taxable year ended [REDACTED].

CONCLUSION

[REDACTED] is the proper party to execute Form 872 (Consent to Extend the Time to Assess Tax) for [REDACTED] taxable year ended [REDACTED].

FACTS

[REDACTED] ([REDACTED]) was incorporated in Vermont on [REDACTED]. [REDACTED] was a subsidiary in an affiliated group of corporations. The common parent of the affiliated group was [REDACTED] (EIN [REDACTED]). [REDACTED] did not file as part of the consolidated income tax return of [REDACTED] for its taxable year ended [REDACTED].

[REDACTED] reported an income tax liability of \$ [REDACTED] on its corporate income tax return, Form 1120 for its taxable year ended [REDACTED]. This liability has been assessed and paid. On [REDACTED] [REDACTED] filed an amended income tax return, Form 1120X reporting an additional tax liability of \$ [REDACTED]. This amount has also been assessed and paid.

On [REDACTED] [REDACTED]'s parent, [REDACTED] merged with and into [REDACTED] (EIN [REDACTED]). [REDACTED] was the surviving corporation and was re-named [REDACTED] (EIN [REDACTED]). [REDACTED] became the sole shareholder of all the issued and outstanding shares of [REDACTED].

On [REDACTED], [REDACTED] adopted a plan of complete liquidation under I.R.C. § 332. All the remaining assets of [REDACTED] after payment of its debts and taxes were distributed to [REDACTED] in exchange for all [REDACTED]'s outstanding stock.

On [REDACTED] [REDACTED] filed Articles of Dissolution with the Vermont Secretary of State. The Articles of Dissolution provide that the dissolution was authorized by the shareholders and is signed by [REDACTED], in his capacity as President, [REDACTED].

You have examined [REDACTED] for its taxable year ended [REDACTED]. You are not proposing any adjustments be made to [REDACTED]'s income tax liability for its taxable year ended [REDACTED]. Accordingly, you will not be issuing a notice of deficiency to [REDACTED]. At this time there are no outstanding balances due on [REDACTED]'s account for the period ending [REDACTED].

LAW AND ANALYSIS

[REDACTED] was, prior to its dissolution on [REDACTED], a corporation organized under the laws of the State of Vermont. Vermont law provides that a dissolved corporation's existence continues indefinitely for the limited purposes of "winding up" and liquidating its business and affairs. Vt. Stat. Ann. tit. 11A, § 14.05 (1997).

The authority of a corporate officer to act for a dissolved corporation in tax matters derives from the law of the state or territory of incorporation. United States v. Krueger, 121 F.2d 842, 845 (3rd Cir. 1941), cert. denied, 314 U.S. 677 (1941). In a case involving Delaware law, the Board of Tax Appeals held that the officer of a dissolved corporation had authority to execute a consent, provided that the consent was executed within the corporation's winding-up period. H.D. Walbridge & Co. v. Commissioner, 25 B.T.A. 1109 (1932).

I.R.C. § 6501(a) provides that as a general rule, tax must be assessed within three years of the filing date of the return. In accordance with I.R.C. § 6501(c)(4), a taxpayer and the Internal Revenue Service may consent in writing to extensions of time for making assessments. The regulations under this Code section do not specify who may sign such consents; however, the Service generally applies the rules applicable to execution of the original returns to consents to the extension of time to make an assessment. I.R.C. § 6062 provides generally that a corporation's income tax return must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. Rev. Rul. 83-41, 1983-1 C.B. 399 clarified and amplified, Rev. Rul. 84-165, 1984-2 CB. 305.

A current officer of [REDACTED] in his or her capacity as an officer of the corporation is the proper party to execute a Form 872, Consent to Extend the Time to Assess Tax, for [REDACTED] for the taxable year ended [REDACTED].

I.R.C. § 6501(c)(4)(B) provides that the Service shall notify the taxpayer of their right: 1) to refuse to extend the period of limitations; or 2) to limit such extension to particular issues; or 3) to limit the extension to a particular period of time. This notice must be provided each time an extension is requested. The legislative history of this provision states that Congress believed that taxpayers should be fully informed of their rights with respect to the statute of limitations on assessment. Congress expressed concern that in some cases taxpayers were not fully aware of their rights to refuse to extend the statute of limitations, and have felt that they had no choice but to agree to extend the statute of limitations upon the request of the Service. See H.R. Conf. Rep. No. 105-599 at 286 (1998).

As part of RRA 98 training, Service personnel were instructed that section 6501(c)(4)(B) can be satisfied by informing taxpayers, either orally or in writing, of their right to refuse to consent to an extension of the statute of limitations, or to limit such an extension to specific issues or to a specific time frame. Service personnel were advised to secure consents to extend statutes of limitations by sending Letter 907(DO) (Rev. 2-2000) or Letter 907(SC) (Rev. 12-1999). See IRM 4541.1 and IRM 121.2.22.3. Service personnel were advised they could provide the taxpayer with a copy of Publication 1035, Extending the Tax Assessment Period (Rev. 12-1999), each time a statute extension was requested, but the best practice would be to advise taxpayers of their rights by sending Letter 907(DO) (Rev. 2-2000), Letter 907(SC) (Rev. 12-1999), or Letter 967 (Rev. 12-1999). (See IRS RRA 98 National Resource Center Question 203.) Service personnel were instructed to document their actions.

Since you are not seeking to issue a statutory notice of deficiency asserting additional taxes and since there are no outstanding balances due from [REDACTED] we are not addressing the issue of transferee liability in this memorandum.

If you need further assistance, please contact Paul Colleran at (617) 565-7838.

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By: _____
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